

July 10, 2007



TRANSCRIPT
July 10, 2007

MONTGOMERY COUNTY COUNCIL

Councilmember Marilyn Praisner, President
Councilmember Phil Andrews
Councilmember Marc Elrich
Councilmember Nancy Floreen
Councilmember Duchy Trachtenberg

Councilmember Michael Knapp, Vice-President
Councilmember Roger Berliner
Councilmember Valerie Ervin
Councilmember George Leventhal



July 10, 2007

1 President Praisner,
2 Good morning, ladies and gentlemen. Would you please rise. Susan Troxel, Spiritual
3 Assembly of the Baha'I of Montgomery County, Gaithersburg, will lead us in an
4 invocation.

5
6 Ms. Troxel,
7 Lord, we ask your blessings today for the esteemed members of the County Council, for
8 all those who assist and support them in their work, for all their services on behalf of the
9 citizens of Montgomery County, and for all those that are here today to participate in the
10 process of government. Oh, my God, oh, my God, unite the hearts of thy servants and
11 reveal to them thy great purpose. May they follow thy commandments and abide in thy
12 law. Help, oh God, in their endeavor. And grant them strength to serve thee. Oh, God,
13 leave them not to themselves but guide their steps by the light of thy knowledge and
14 cheer their hearts by thy love. Verily, thou art their helper and their Lord.

15
16 President Praisner,
17 Thank you. Announcements and calendar changes, Madam Clerk.

18
19 Council Clerk,
20 Just two things. There are no committees meeting this afternoon, and this evening's
21 session has been moved to the third-floor hearing room.

22
23 President Praisner,
24 And I've had a request to have someone to go and check and make sure that the air
25 conditioning is working on the third floor.

26
27 Council Clerk,
28 We will handle that. Done. Thank you.

29
30 President Praisner,
31 Thank you. And there are no petitions you said; correct? Okay. We have action on the
32 minutes. Madam Clerk.

33
34 Council Clerk,
35 We have the minutes of March 14th and June 26th for approval.

36
37 President Praisner,
38 Is there a motion?

39
40 Unidentified,
41 (Inaudible).

42
43 President Praisner,



July 10, 2007

1 Approval, Councilmember Trachtenberg; second Councilmember Floreen. All in favor of
2 approving the minutes? It's unanimous among those present. We move to the consent
3 calendar.

4
5 Vice President Knapp,
6 Move adoption.

7
8 President Praisner,
9 Move adoption by Council Vice President Knapp. Is there a second?

10
11 Councilmember Trachtenberg,
12 Second.

13
14 President Praisner,
15 Councilmember Trachtenberg. Are there items that Councilmembers would either like to
16 comment on or pull from the consent calendar? Councilmember Berliner.

17
18 Councilmember Berliner,
19 Yes, I note that we have Item L, a resolution to amend our transportation fees, charges
20 and fares. If I'm correct, I believe that refers to the parking fee issue. And if so I would
21 like to be added as a cosponsor with respect to that resolution.

22
23 President Praisner,
24 Okay, so noted. Councilmember Andrews.

25
26 Councilmember Andrews,
27 Thank you, Madam President. Item A is introduction of a special appropriation of
28 \$250,000 to fund a fire sprinkler systems for group homes. The Public Safety
29 Committee met last week to discuss this issue. We've had a couple other meetings on it
30 as well. I am recommending that this be approved by the Council. We have a public
31 hearing scheduled on the 24th followed by action. The issue is there are at least 42
32 group homes in the County that are in the category of serving five or fewer beds that
33 serve vulnerable individuals that are not compliant to the fire code. They don't have
34 windows that are compliant. They don't have fire sprinkler systems. We are all very
35 concerned about the vulnerability of this population, and in many cases the inability to
36 move quickly to get out of harm's way if there were a fire. What this would do is provide
37 county funding to help get these homes sprinklered (sic) very quickly so that we remove
38 this risk to these people. And these would be -- these are homes where the majority of
39 the people living in them are publicly funded individuals; or in the public system. So that
40 will be before the Council for public hearing in two weeks scheduled by action. The
41 Public Safety Committee appreciates all the good work done by the Fire and Rescue
42 Service and Housing and Community Affairs in working through this and the comments
43 from individuals who serve people in these homes.



July 10, 2007

1 President Praisner,

2 Thank you. Actually I had some questions about the Item. I think in the future since it
3 does involve group homes it would be useful for the PHED Committee to also have
4 conversation on the issue. It raises some questions about the purchase or ownership of
5 these homes, and going forward from a standpoint of approving them as group homes;
6 and also a question in my mind of whether this should be supported through the
7 Housing Initiative Fund in some way as far as supporting to the extent. And the concern
8 if they are not owned by a nonprofit or some organization that is operating the group
9 homes, if it's only for a three-year commitment, then we've made a significant
10 investment to a private home where those individuals may turn around and sell it as a
11 private home and advertise that it has been sprinkled. And I don't see why the
12 government should be investing that amount of money for a private homeowner where
13 the property owner is not a long-term group home organization. So through the public
14 hearing process I would like to have those questions answered. And I certainly
15 understand and support having people in a group home who are now in bedrooms that
16 are not legally allowed to be bedrooms because they don't have the access are
17 responding to that. But, while I support that kind of perspective, I am a little concerned
18 about our financing the sprinklers if it's only a commitment for three years. And it does
19 raise a question about the conversion of these buildings to group homes going forward
20 as well. If there are units that are homes -- going to be group homes where the
21 bedrooms don't qualify as bedrooms, folks need to know that as a cost of going forward
22 with the home is making the windows compliant. So I hope we'll have that fuller
23 conversation when we get to the public hearing and discussion. Duchy?

24
25 Councilmember Trachtenberg,

26 Actually I want to start off by thanking the Public Safety Committee for forwarding this
27 Item. I think it's really critically needed to address the problems that have occurred
28 around the installation of sprinkler systems. In the course of the few months that I've
29 been here my office has received a lot of correspondence about this very issue. But
30 also around the availability of sprinkler systems in recreational sites as well, and I just
31 wanted to ask the Public Safety Committee Chair if that was something that had been
32 discussed within the Committee; and if not, could we have a further dialogue with the
33 community about that, 'cause that's also been raised by a number of people.

34
35 Councilmember Andrews,
36 Any particular recreational site?

37
38 Councilmember Trachtenberg,
39 I think there are two or three that we actually -- .

40
41 President Praisner,
42 Government sites or private sites?

43
44 Councilmember Trachtenberg,



July 10, 2007

1 I think one if not two of them were County facilities.

2
3 Councilmember Andrews,
4 Well, please get me any detail you can. Happy to look into it. We'll take a look at it.

5
6 Councilmember Trachtenberg,
7 Okay. Thank you.

8
9 President Praisner,
10 Okay, any other items on the consent calendar? If not, all in favor approving the consent
11 calendar? Okay. That is unanimous. Okay. We're only a few minutes ahead of schedule
12 but I think if the Hearing Examiner is here -- folks are here for this issues. So we have
13 the Hearing Examiner's report and recommendations on Application Number G-843.
14 Ms. Carrier, any comment you want to make before we consider this item?

15
16 Ms. Carrier,
17 None except to remind the Council or to tell the Council that Mr. Tierney regrets not
18 being able to be here himself. I think you probably know, there was a family crisis that
19 necessitated his staying in New York State, so I will fill in for him as best I can.

20
21 President Praisner,
22 Thank you. Councilmember Berliner.

23
24 Councilmember Berliner,
25 Well, as I recall we, at the suggestion of the Hearing Examiner, remanded this matter
26 back to you to take a look certain items.

27
28 Ms. Carrier,
29 Correct.

30
31 Councilmember Berliner,
32 And as I review the report it appears as if all those items in fact were addressed. Some
33 of the concerns that the Council had, the Hearing Examiner had, particularly related to
34 the massing issue; and now you have concluded that the massing issue has been
35 resolved because it is only 2-1/2 feet taller than an adjoining neighborhood where the
36 particular issue was raised.

37
38 Ms. Carrier,
39 The entire building would be higher than that, but there is setback now at this fourth-
40 story level that will reduce the massing and create more air space and more light space
41 between the two buildings. And I concur with Tierney's conclusion that this makes a
42 difference. They also moved the bay windows, which used to be in the middle of the
43 building; they moved them closer to West Lane, which also -- sort of moves that



July 10, 2007

1 projection away from the villages of Bethesda. And I agree with Mr. Tierney that it
2 makes a difference in creating a compatible relationship.

3
4 Councilmember Berliner,
5 And at one point this application did have some opposition? Does it still to the best of
6 your knowledge?

7
8 Ms. Carrier,
9 It does not. The record suggests that the people who were in opposition apparently are
10 satisfied with the changes that the applicant has made.

11
12 Councilmember Berliner,
13 Great. And there was also some question with respect to the width of a particular road;
14 and now that issue has been resolved as well?

15
16 Ms. Carrier,
17 I think that issue has been very nicely resolved, because the applicant has made a very
18 clear commitment now to pave 22 feet, which will create sufficient room to be just even
19 a little wider than the minimum width for a two-lane roadway. It was an ambiguity. I have
20 the sense from reading the record that the applicant may have intended to do that all
21 along. They just didn't make it clear before, so it wasn't -- you just couldn't tell what their
22 intentions were. And now it's very clear what they intend to do and they'll create a
23 roadway that would be adequate for the use that's proposed.

24
25 Councilmember Berliner,
26 And as I recall, there was also some ambiguity with respect to the issue of lead
27 certification; which has now been resolved to satisfaction was the Hearing Examiner as
28 well?

29
30 Ms. Carrier,
31 Yes, they also did that by clarifying textual binding element that makes it clear they are
32 going to incorporate certain elements and that they are going strive from lead
33 certification. Obviously they can't get it until much later in the process. But they've made
34 the strongest commitment that they can at this point.

35
36 Councilmember Berliner,
37 So it appears to me that this is one of instances in which the remand achieved its
38 desired results in terms of coming back with a project that has eliminated opposition and
39 addressed the concerns that had been articulated previously?

40
41 Ms. Carrier,
42 I believe so.

43
44 Councilmember Berliner,



July 10, 2007

1 Thank you.
2
3 President Praisner,
4 Okay, is there a motion on this item? Councilmember Berliner?
5
6 Councilmember Berliner,
7 I will move the adoption of the report.
8
9 President Praisner,
10 Okay, there is a motion. Is there a second? Councilmember Berliner has made the
11 motion; Councilmember Trachtenberg has seconded the motion. Madam Clerk, I see no
12 other lights so can you call the roll please?
13
14 Council Clerk,
15 Ms. Ervin?
16
17 Councilmember Ervin,
18 Yes.
19
20 Council Clerk,
21 Mr. Elrich?
22
23 Councilmember Elrich,
24 Yes.
25
26 Council Clerk,
27 Ms. Floreen?
28
29 Councilmember Floreen,
30 Yes.
31
32 Council Clerk,
33 Ms. Trachtenberg?
34
35 Councilmember Trachtenberg,
36 Yes.
37
38 Council Clerk,
39 Mr. Leventhal?
40
41 Councilmember Leventhal,
42 Yes.
43
44 Council Clerk,



July 10, 2007

1 Mr. Andrews?
2
3 Councilmember Andrews,
4 Yes.
5
6 Council Clerk,
7 Mr. Berliner?
8
9 Councilmember Berliner,
10 Yes.
11
12 Council Clerk,
13 Mr. Knapp?
14
15 Vice President Knapp,
16 Yes.
17
18 Council Clerk,
19 Ms. Praisner?
20
21 President Praisner,
22 Yes. That approval is passed 9-0. Thank you. Seems to me we could have saved time if
23 we had all this in the first place. I'm glad that it is disposed of positively. That concludes
24 the Council's work for this morning. We will be back at 1:30 for three public hearings,
25 and then this evening at 7:30 in the third-floor hearing room for the other public hearing.
26 Thank you. We are in recess.
27

July 10, 2007



TRANSCRIPT
July 10, 2007

MONTGOMERY COUNTY COUNCIL

Councilmember Marilyn Praisner, President
Councilmember Phil Andrews
Councilmember Marc Elrich
Councilmember Nancy Floreen
Councilmember Duchy Trachtenberg

Councilmember Michael Knapp, Vice-President
Councilmember Roger Berliner
Councilmember Valerie Ervin
Councilmember George Leventhal



July 10, 2007

1 President Praisner,
2 Good afternoon, ladies and gentlemen. This is a public hearing on Subdivision
3 Regulation Amendment 7-01, Adequate Public Facility Validity Period, which would
4 revise the validity period of a finding of adequate public facilities by the Planning Board,
5 and the process and standards to extend the finding of adequacy, reduce the maximum
6 validity period of a finding by the Planning Board of adequate public facilities from 12 to
7 10 years, and update obsolete language and make corrective stylistic changes. A
8 Planning, Housing and Economic Development Committee work session is tentatively
9 scheduled for September 10th at 2:00 p.m. Persons wishing to submit additional
10 material for the Council's consideration should do so by the close of business July 31st.
11 Before beginning your presentation, please state your name clearly for the record. We
12 have one speaker, Karl Moritz. Aren't you spending enough time with us up here, Karl?

13
14 Mr. Moritz,
15 I'm enjoying every minute of it.

16
17 President Praisner,
18 Oh, the pleasure is ours.

19
20 Mr. Moritz,
21 For the record, my name is Karl Moritz of the Montgomery County Planning Department
22 representing Chairman Hansen, who wished to be here today but was unable to. I'm
23 pleased to present the testimony of the Montgomery County Planning Board on SRA
24 07-01. It implements the Planning Board's recommendations for changing the time limit
25 of a finding of adequate public facilities. When the Planning Board finds that public
26 facilities are adequate for a subdivision, that finding has a time limit. That was not
27 always true prior to 1989; an APF finding had no time limit. But over the years the
28 Council has taken actions to limit the time limit of a finding of adequate public facilities
29 for the purpose of having a smaller and more active pipeline of approved development.
30 The Planning Board's testimony contains some reasons why the Council and the
31 County's policy has been to have a smaller and more active pipeline. And so when the
32 Council asked the Planning Board to look at this issue again in the growth policy this
33 year, the board made the following recommendations. They found that the 12-year
34 outside time limit, the longest time limit that the board is allowed to give is too long. The
35 studies that the Board conducted show that most projects, even large ones, can be
36 completed in a decade. And if they can't be many of them are eligible for an extension.
37 And if not, the Board believes that they should come in for a new adequate public
38 facilities test. The second issue the board felt that enactive pipelines can remain --
39 inactive projects can remain in a pipeline for too long, and inactive projects have caused
40 a number of problems, including inflating the pipeline so that other development projects
41 need to include them in their background traffic. So the Board is asking that for a project
42 to continue to receive a longer APF time limit that it meet a phasing plan, that it would
43 be part of its original approval. And then finally, the board felt that projects that receive a
44 longer time limit may need to make an additional transportation improvement. Because



July 10, 2007

1 of the additional amount of time that project is using development capacity, traffic
2 conditions may change considerably over that period, and so an additional
3 transportation improvement may be warranted.

4
5 President Praisner,

6 Thank you. Thank you very much. Questions? Vice President Knapp.

7
8 Vice President Knapp,

9 Thank you, Madam President. On your first bullet, the chief concerns that the 12-year
10 outside time limit is too long. From an actual construction piece I don't disagree that 10
11 years is probably how long things -- larger projects will take. But what if and I don't I've
12 seen some projects that are waiting for downturns in the market, things that have
13 nothing to do with the actual construction of the site itself. They're waiting for the ability
14 to actually have tenants, occupants for whatever facility they're trying to construct. And
15 so have you taken that into account? Have you looked at that? Or is it merely -- has
16 your assessment merely been on the you can build a large project in ten years.

17
18 Mr. Moritz,

19 The study that we conducted was actually the time from approval until completion. And
20 actually that is conservative in a sense because you don't need to be completed in that
21 10 years; you only need to get your building permits within 10 years. So when the Board
22 found that residential projects can be -- on an average are completed within five years
23 and commercial projects within 10. That doesn't account for the fact that actually there's
24 probably at least a year gap. They even got their building permits probably a year even
25 earlier than that.

26
27 Vice President Knapp,

28 Okay.

29
30 President Praisner,

31 There was a discussion about the fact that they still could come in for an extension.

32
33 Mr. Moritz,

34 That's also true. And any project that has demonstrated that it's building out -- and that
35 requires it to be a certain percentage complete, like 40% complete, and having had 10%
36 construction in the last four years, they're eligible for an extension. So any project that's
37 actually being built would likely be eligible for an extension.

38
39 Vice President Knapp,

40 All right. Thank you.

41
42 President Praisner,

43 I see no other lights. Thank, you Karl.



July 10, 2007

1 Mr. Moritz,
2 Thank you.

3
4 President Praisner,
5 Let's see. What did I do with the other things. Good afternoon, ladies and gentlemen,
6 this is a public hearing on Expedited Bill 14-07, Forest Conservation - Enforcement,
7 which would prohibit the Director of Permitting Services from issuing a building permit
8 for a structure to be located on land that was cleared in violation of the Forest
9 Conservation Law; (inaudible) certain applicants to notify other property owners of
10 certain proposed actions under the Forest Conservation Law; and specified the time
11 period for notice to property owners and the Planning Director; allowing an aggrieved
12 party to file a private civil action to enforce the Forest Conservation Law and for certain
13 damages; and generally amend the enforcement provisions of the Forest Conservation
14 Law. A Transportation and Environment Committee work session will be scheduled at a
15 later date. Persons wishing to submit additional material for the Council's consideration
16 should do so by the close of business, Monday, July 30, 2007. Before beginning your
17 presentation, please state your name clearly for the record. I just want to make one
18 comment since I've received several bits of correspondence on the bill. I think there's a
19 misunderstanding continues on what expedited means. It doesn't mean that we are
20 going to rush to process the issue. It means that the bill, once signed by the Executive,
21 goes into law on the day in which it's signed. That's the expedited nature of the
22 legislation, not that the bill is being treated in any different way. The legislation has been
23 introduced. There are other -- we will hold a public hearing on it today. There are other
24 Forest Conservation Law changes that are working their way through the Planning
25 Board at this point. And the chief sponsor of this legislation, Councilmember Elrich, has
26 been working with Park and Planning, and the thinking at this point is to have those kind
27 of come together in the fall when the Council has an opportunity to see the other
28 recommendations as well. So expedited does not mean ignoring the procedures that we
29 have in place; expedited deals with the date in which a piece of legislation goes into
30 effect once signed by the County Executive. With that in mind, we have two panels
31 today on this legislation. We'll call the first group up. Carla Joyner speaking for the
32 County Executive; Steve Kanstoroom speaking on his own behalf; Wayne Goldstein on
33 his own behalf; Betty Petrides, Citizens for a Better Bethesda; and Shelly Greenberg
34 speaking as an individual as well. And, Carla, welcome. You're first if you want to push
35 the button in front of you, you may begin.

36
37 Ms. Joyner,
38 Thank you very much. My name is Carla Reid Joyner and I am here on behalf of our
39 County Executive Isaiah Leggett. The County Executive supports the intent of this Bill;
40 however, he is concerned that some of the bill's provisions have potential unintended
41 consequences and others may need some clarification. To begin with, we believe that
42 some of the bill's provisions need to be clarified in order to ensure that they can be
43 implemented. For example, Section 8-25C prohibits a director from issuing a permit --
44 any permit; if a tree has been removed in violation of Chapter 22A. This provision raised



July 10, 2007

1 several issues. One, how long does this provision last? Two, does it apply if the
2 applicant for the permit is a bona-fide purchaser for value who was uninvolved in the
3 illegal tree removal? And three, does the prohibition apply to an entire track of land,
4 even if the track is later subdivided into multiple lots, some of which would not
5 encompass the site where there was the illegal tree removal. The bill also has the
6 potential of preventing corrective measures necessary to mitigate the environmental
7 damage created by illegal forest clearing. Permits are necessary for erosion and
8 sediment control structures, and should be clearly allowed. Now here goes. Thank you,
9 President Praisner, for clarifying this because my statement seems to go to that
10 misunderstanding you talked about. We understand the Council's desire to expedite the
11 bill, but we are concerned that there are some significant implications to the bill that
12 need to be explored and worked out so the bill can be implemented and without
13 unintended consequences that further damage the environment. We look forward to
14 working with you during your coming worksessions. Thank you.

15
16 President Praisner,
17 Thank you. Steve Kanstoroom.

18
19 President Praisner,
20 Steve, the button in front of you needs to be pushed. Thank you.

21
22 Mr. Kanstoroom,
23 Thank you for allowing me to testify today. I'm a lifelong county resident and I reside
24 with my wife and small children in Ashton, Maryland. Our complete re-forested property
25 is zoned rural cluster five acre. We moved to Ashton to live in the woods. We mistakenly
26 believe that the Forest Conservation Law would be uniformly enforced, thereby
27 protecting our way of life and property values. That's not been the case. Instead an
28 illegal forest clearing occurred adjacent to our home when our new, non-resident
29 neighbors attempted to build a commercial-like structure. It was one and a half times the
30 size of the footprint of their home, large enough to hold 17 cars, and accept tractor-
31 trailer deliveries, and situated literally in our front yard. Our view of the forest changed to
32 a view of a rubble pile and what appears to be a construction storage lot. Remarkably,
33 Park and Planning took the position that the clearing was largely preexisting despite
34 overwhelming evidence to the contrary. Aerial photography that was in their files -- Park
35 and Planning's files -- they refused to acknowledge for more than 16 months. Take a
36 look at the photos that are in your packet and decide for yourself if this looks like a
37 preexisting clearing. After Park and Planning refused to act I found a series of false
38 documents, some signed under the penalty of perjury that mischaracterized the area as
39 not a forest, previously cleared, and to be used for commercial agricultural purposes.
40 My non-resident neighbors own a concrete construction business; they are not farmers.
41 And I also found a false survey was submitted showing nearly a half acre of my property
42 as my neighbor's. And consequently DPS issued a stop-work order and that order has
43 remained in effect since January 2006. Ultimately, after an inordinate amount of time --
44 one and a half years of work on behalf of myself, Councilmembers, legislators, now



July 10, 2007

1 Park and Planning has agreed that a violation had occurred and they issued a token
2 \$500.00 penalty. But the USDA's independent assessment showed 22,000 square feet
3 of land has been cleared -- forest had been cleared. Park and Planning rewarded a web
4 of lies by refusing to order the illegally cleared area to be placed under conservation, as
5 is their standard practice; and then allowed a number of small trees to be planted within
6 the forest rather than in the illegally cleared area as a token remediation. Soon
7 thereafter the Inspector General referred aspects of these events to outside
8 investigatory agencies. Although justice will eventually be served, my family and I
9 cannot be made whole by criminal prosecutors. My nonresident neighbor's actions have
10 devalued my property by six figures or more. I have no standing to challenge Park and
11 Planning's action of looking the other way at false and misleading documents. And the
12 law in its current form says I'm not aggrieved; only my nonresident neighbor, the forest
13 clearer, is deemed to be aggrieved under the law. Yet my family sees this mess every
14 day.

15
16 President Praisner,
17 Steve, your time is up. We have your written testimony, but you'll have to conclude.

18
19 Mr. Kanstoroom,
20 Thank you.

21
22 President Praisner,
23 Thank you. Mr. Goldstein.

24
25 Mr. Goldstein,
26 I'm Wayne Goldstein speaking as an individual. However, I am president of two
27 countywide organizations who would benefit from some aspects of this law, particularly
28 if such groups would be allowed to participate in private civil actions. In fact, one of the
29 groups Montgomery Preservation did work with community members of a Bethesda
30 community to protect a champion cherry tree. And while our standing was not
31 challenged, we would like -- I think would like the opportunity to be able to do that in the
32 future to assist neighbors in such actions. In effect, this law -- these proposed
33 amendments to the Forest Conservation will deputize a number of residents of the
34 County to take actions to help better enforce our Forest Conversation Law, perhaps if
35 an agency is reluctant to do so, but also perhaps if the agency is just overworked. So I
36 think these are good ideas and deserve to be included in the law. There obviously will
37 need to be some clarification as Director Joyner pointed out. But in general, this seems
38 it is to be a well thought out, well written amendment to the law. And I would encourage
39 the County Council as part of the amendments to the Forest Conservation Law to pass
40 it at the time they're ready to do so. Thank you.

41
42 President Praisner,
43 Thank you. Ms. Petrides.



July 10, 2007

1 Ms. Petrides,

2 Thank you very much. I am testifying today to say that as a member of the Citizens for
3 Better Bethesda, I support the Expedited Bill 14-07 and think that it is a good idea that it
4 makes things clearer and more stringent. But I would also like and I would strongly
5 encourage the Council to pass that legislation. However, I would also like to build on
6 what Mr. Goldstein has said and raise the issue of groups being able to be aggrieved
7 personages in certain circumstances within communities. Now I realize that down
8 county we don't have a huge amount of forest left. But there are changes afoot that may
9 make some of that area of forest that would be under the conservation -- Forest
10 Conservation Act -- Law. And so I wanted to mention two instances where we have had
11 problems in the past which could have been prevented had we had that ability to sue
12 under such an amendment as this. One is Maiden Lane of course which meets the
13 criteria in terms having to deal with no notice when the property was taken, and having
14 to deal with comments that were made that were materially false in trying to deal with it
15 after it had been sold. In addition to that, it was very clear that the neighbors on either
16 side of that property who wanted to protect it could not because they couldn't afford to
17 go to court. And so it took the three subdivisions that that piece of property was served
18 by to go to court and remedy that. And we would like to have that ability down county if
19 in fact some of those areas that are smaller are not going to be included under the
20 Forest Conservation Law. Hillmeade is another example where there is forest involved -
21 - forest woods if you will -- involved and in which it was difficult for the people who were
22 trying to protect the area to have standing and deserved to have it because they are
23 protecting not only that piece of property but also the interests of the community. One of
24 the things that has occurred in the testimony that has gone before the Planning Board is
25 mention of a stream that is seasonal, which has been declared to be nonexistent. Those
26 streams don't disappear. They tend to go underground. And in my own neighborhood
27 one of those streams is now filling basements down the street and people have to have
28 multiple sump pumps to deal with it. So here we have a community that may itself not
29 have adjoining or confronting neighbors that may be affected by it, but other people in
30 the community may be. And so I would like to on behalf of people in Bethesda ask that
31 civil groups be under certain circumstances entitled to be aggrieved personages and be
32 able to testify and protect their community. Thank you very much.

33
34 President Praisner,
35 Shelly Greenberg.

36
37 Ms. Greenberg,

38 My name is Shelly Greenberg. Thirty-seven years ago when I moved to Bethesda, it
39 was a forest. In the last five years we have suffered the loss of over 100 trees, yet we
40 have never received any notice of pending clearing. Calls to Park and Planning have
41 been of no help. I, along with my neighbors, am very concerned about MNCPPC's
42 selective enforcement of the Forest Conservation Law. We wholeheartedly support this
43 bill and respectfully request that you consider adding community groups and
44 environmental groups to the definition of aggrieved parties. Last year our community



July 10, 2007

1 worked to remove ambiguity from the Forest Conservation Law for the protection of
2 champion trees. The average citizen is no match for a system that is currently set up to
3 assist those wanting to clear trees at the expense of the community. We value the trees
4 and the forest and believe that we should be able to rely upon the Forest Conservation
5 Law to protect our property values and our air quality. However, we learned that
6 Maryland National Capitol Park and Planning Commission turns a blind eye to
7 enforcement issues and is quick to point out that they are answerable to no one. This is
8 unacceptable. MNCPPC receives more than \$100 million from Montgomery County
9 every year and is the primary enforcer of the Forest Conservation Law. When they
10 refuse to enforce the law, it is individual citizens and the entire community that suffers.
11 We must have the ability to protect our properties and the county's tree resources. This
12 bill would grant citizens the right to seek court intervention to enforce the law when it is
13 learned that materially false and misleading documents have been relied upon for a
14 forest clearing. This bill would also take away an incentive from those who would
15 wrongly cut our forests and trees for the sake of their personal gain. This bill would also
16 help to fix the broken system by requiring notice to neighbors prior to tree cutting, just
17 like the current requirement that neighbors are notified prior to the demolition of a
18 neighboring house. It is wrong that those of us who care about our neighborhoods and
19 our community are always playing catch up.

20
21 President Praisner,
22 Thank you. Mr. Leventhal.

23
24 Councilmember Leventhal,
25 This question is for staff. Is the effect of this bill to empower private citizens to sue for
26 violations of Forest Conservation Law no matter when they occurred in the past? In
27 other words, does passage of this bill give that right to Mr. Kanstoroom for the property
28 next door to him?

29
30 Mike Faden,
31 That -- in general, yes. That would depend on, among other things, what statutes of
32 limitations apply and when the violation occurred.

33
34 Councilmember Leventhal,
35 I don't see any statute of limitations as drafted. Is there one (inaudible)?

36
37 Mike Faden,
38 There is none in here. The (inaudible) limitations that otherwise apply to that sort of
39 action under state law would apply.

40
41 Councilmember Leventhal,
42 And was it the sponsor's intent to give Mr. Kanstoroom the right, after passage of this,
43 to sue for the previous violation? Was that Mr. Elrich's intent?



July 10, 2007

1 Councilmember Elrich,
2 I didn't have a time line on it. And so I -- .

3
4 Councilmember Leventhal,
5 But your understanding was that passage of this Bill would enable Mr. Kanstoroom to
6 sue.

7
8 Councilmember Elrich,
9 Or anybody for whatever -- .

10
11 Councilmember Leventhal,
12 No matter when the violation occurred?

13
14 Councilmember Elrich,
15 I guess if you're thinking about 50 years ago, that was not my intent. And if there needs
16 to be specific (inaudible).

17
18 Councilmember Leventhal,
19 Well specifically I'm asking about Mr. Kanstoroom. The intent would be he could sue if
20 this bill passed.

21
22 Councilmember Elrich,
23 In this case if there's a Park and Planning decision based on materially false evidence,
24 yes, he could.

25
26 Councilmember Leventhal,
27 Okay. What was the zoning on the property next door to you?

28
29 Mr. Kanstoroom,
30 (Inaudible).

31
32 Councilmember Leventhal,
33 And does rural cluster five acre allow this commercial -- this concrete plant?

34
35 Mr. Kanstoroom,
36 No.

37
38 Councilmember Leventhal,
39 So are there not -- other than passing this new legislation, are there not other means
40 that would -- that should have precluded the construction of an industrial facility on a
41 rural cluster parcel. Carla, maybe you know the answer to that. How did this thing
42 permitted. Did it get permitted?

43
44 Ms. Joyner,



July 10, 2007

1 I really don't know the history of that. I can research that and get back to you though,
2 Councilmember Leventhal.

3
4 Councilmember Leventhal,
5 But it doesn't -- as I hear Mr. Kanstoroom's testimony, it doesn't sound like something
6 that would be permitted in a rural cluster parcel.

7
8 Mr. Kanstoroom,
9 I can tell you the history of this.

10
11 Councilmember Leventhal,
12 Okay.

13
14 Mr. Kanstoroom,
15 It was first -- on the building application the applicant wrote -- left the amount of area to
16 be cleared as blank. The trigger is 5,000 feet under the Forest Conservation Law. And
17 so although the building size is 2400 square feet and obviously it takes more land than
18 that to erect a 2400 square foot building because of grading and the like, they left it
19 blank. So the way it works is that that number is 5,000 feet or better -- or greater, that
20 applicant -- application gets put on hold and it goes to Park and Planning. Because the
21 applicant left it blank DPS issued the permit on it.

22
23 Councilmember Leventhal,
24 But does that permit now pertain to an industrial use in a rural cluster zone? Why are
25 concrete trucks roaring in and out of a parcel that's zoned rural cluster? Why is that
26 activity legal?

27
28 Mr. Kanstoroom,
29 It's not.

30
31 Councilmember Leventhal,
32 Okay, is that not something DPS could look into if it's an illegal -- a nonconforming use
33 in a rural cluster residential zone?

34
35 Ms. Joyner,
36 Yes, we can. I didn't know about the concrete trucks. I hadn't heard that part.

37
38 Councilmember Leventhal,
39 Are there other remedies (inaudible) -- I understand the trees are gone.

40
41 Mr. Kanstoroom,
42 The trees are gone.

43
44 Councilmember Leventhal,



July 10, 2007

1 But In terms of the use, it doesn't sound like an allowable use in that zone.

2
3 Mr. Kanstoroom,

4 No the current -- the use today is more like a storage lot, so to speak. The trucks are not
5 rolling. The building -- it's an abandoned construction site. It's my understanding -- .

6
7 Councilmember Leventhal,
8 So it's a warehouse?

9
10 Mr. Kanstoroom,

11 No, it was stopped. DPS issued a stop work order when I showed them that the survey
12 was false. When I showed them that the survey had a half acre of my property showing
13 as theirs, DPS issued a stop work order in 2006. And the clearing has been left as is.
14 Park and Planning ultimately, with all the work that I referenced, ordered trees to be
15 planted, but they planted them in the forest under the canopy. They left the cleared --
16 the big hole in the forest is still there. It can still accommodate the building.

17
18 Councilmember Leventhal,

19 Okay. I understand about the trees. Your testimony says we now hear highway traffic
20 and see trucks coming and going onto the neighboring properties. Why are trucks
21 coming and going onto a residentially zoned rural cluster property?

22
23 Mr. Kanstoroom,

24 It would be best to ask the owner of the property that; I don't know that one.

25
26 Councilmember Leventhal,

27 Well I'm asking the Director of DPS.

28
29 Ms. Joyner,

30 We have not heard that as one of the issues or concerns at that particular property. But
31 if it is then that's something that we will investigate and take action on.

32
33 Councilmember Leventhal,

34 You -- an inspector go check that out.

35
36 Ms. Joyner,

37 Yes.

38
39 Mr. Kanstoroom,

40 And just so we're clear. The noise that we hear are not only trucks coming and going
41 but the ongoing noise is because we hear -- now hear the highway traffic. There used to
42 be a forest between us and the highway, but the -- they speed down the highway, and
43 instead of the forest obscuring the sound it comes right across. Instead of seeing -- we



July 10, 2007

1 can now see 800 feet of clear line of sight. We used to be able to see no more than 40,
2 50 feet.

3
4 Councilmember Leventhal,

5 Yeah. I want to just ask. I had not understood that this was -- I now understand that the
6 Forest Conservation Law comes under T&E. I've been on T&E -- I'm in my fifth year on
7 T&E and we haven't really dealt with it that much. I guess we took up the Champion
8 Tree Bill. I've blocked it out so. So when -- so what -- along with everything else we
9 have on our agenda, if the Chair of T&E could maybe give us sort of an overview of the
10 current provisions of Forest Conservation Law in Committee; if we could have a sort of
11 primer on that, 'cause I -- .

12
13 Councilmember Floreen,

14 Well we'll have that from the relevant staff when we get to it. I don't think we're -- we're
15 not going to be seeing this until sometime in the fall.

16
17 President Praisner,
18 September.

19
20 Councilmember Elrich,

21 Yeah. We -- in working with Park and Planning we've agreed to not carry this part of the
22 Forest Conservation Law revisions forward separate of the whole revision of the Forest
23 Conservation Law. We've been trying to work very closely with them to get a
24 comprehensive approach to that, so they felt that we should include this into the total
25 bill. So we've agreed that we will not push the Committee to deal with it separate. We'll
26 deal with this as part of an entire package.

27
28 Councilmember Leventhal,

29 I guess we'd also -- on the issue of whether -- whenever we pass this it gives Mr.
30 Kanstoroom the right to then sue for a violation that occurred prior to passage of the
31 law. I'm not a lawyer but I would like -- I would like some advice on what -- on what right
32 we have to do that to create a new right of action for something that occurred before the
33 law was in place.

34
35 Mr. Faden,

36 We'll raise that as an issue when the bill goes to Committee.

37
38 Councilmember Leventhal,

39 Because in general the bills that we pass are prospective in effect.

40
41 Mr. Faden,

42 Correct. Although a law can apply to preexisting violations.

43
44 President Praisner,



July 10, 2007

1 Councilmember Floreen.

2
3 Councilmember Floreen,
4 Yes, when we take this up, Mr. Faden, and perhaps this will evolve in the state of
5 current thinking. But the whole issue of a private civil action, I don't know -- if you would
6 provide us with a little background on how that fits in with our other regulatory
7 environment. It would be handy and no doubt the County Attorney would be a useful
8 advisor on the subject. Because -- how this relates to the -- just so we understand how
9 this relates to the administrative process.

10
11 Mr. Faden,
12 We'll provide ground on that to the committee.

13
14 Councilmember Floreen,
15 Yeah. Thanks.

16
17 President Praisner,
18 Councilmember Elrich, your mic is still on; did you want to speak?

19
20 Councilmember Elrich,
21 Yeah. Just a quick comment to George's remark. My goal at the end of the day if all we
22 do is prevent these things from happening going forward, that would be a positive step.
23 And so I'm -- as much as I would like to enable whatever we can enable, I think that,
24 you know, the real value in this is there shouldn't be any more incidents like this. And so
25 I'm taking -- I do -- understand this primarily in a prospective way rather than looking
26 backwards. My staff and myself have been involved with this for a while. And I would
27 like not to be involved in things like this in the future. I think there need to be better ways
28 of dealing with it. I wanted to thank Ms. Joyner also for your comments about working
29 with us. I mean I do look forward to your input both on this so and the larger tree bills so
30 we can make sure that everybody comes out with a law that we can all work with.
31 Because that's something that you can enforce and don't feel is manageable; won't do
32 any of us any good. My question for Steve is -- two questions; one is what could have
33 happened differently that would have changed this outcome? What in the Bill would
34 make a difference to a different outcome -- would have made a difference for a different
35 outcome for you?

36
37 Mr. Kanstoroom,
38 If we would have received notice of the demolition of the existing small structure that
39 was on the site as required by law, we would have been tipped off that something is
40 about to happen. But that didn't happen. We didn't receive a notice required by law of
41 the structure to be demoed. Had Park and Planning when they -- when I brought the
42 violation to their attention, had they accepted their own photographs that were in their
43 file, they would have stopped it then, but they didn't. If there was a notice that a building
44 was going to go up, even if we didn't get a notice of the demo, well then we should have



July 10, 2007

1 received a notice that a building was going to go up, but there wasn't one of those
2 either, of course. If there was a notice that there was to be clearing we would have
3 known. All these -- we just -- we didn't know. We had no way to know. And then worse
4 after we did find out of course, 16 months went by when it was argued that nothing had
5 happened in effect.

6
7 Councilmember Elrich,

8 Was there only one change to the applicant's application or were there more changes to
9 the application?

10
11 Mr. Kanstoroom,

12 I don't know.

13
14 Councilmember Elrich,

15 Can you describe how the application evolved?

16
17 Mr. Kanstoroom,

18 Sure, I believe there are 14 false statements or documents involved with this
19 application. First, as I said, application number one had the amount of cleared area left
20 blank. After I brought it to Park and Planning's attention and they put in writing that there
21 was no action being taken on this; unbeknownst to me, they were taking action by
22 requiring a Forest Conservation exemption application to be processed. When that
23 happened, the applicant falsely -- or his professional falsely wrote that the forest is not a
24 forest. So Park and Planning has to be able to rely on the documents that their given by
25 qualified professionals or professionals. And when that professional says this is not a
26 forest, well, why are they going to look at anything. It's not a forest. And that was false.
27 You see the aerial photos in your package these trees are -- some of these trees are
28 80, 90, 100 feet tall. This is a mature forest for Montgomery County. They wrote on the
29 appli -- on the -- the same qualified professional wrote that it's a proposed clearing. Well
30 it had already happened. And of course there's a penalty if it -- if you do it in advance.
31 Next they submitted a second drawing. They said all right if it's previously cleared, it's
32 10,000 feet, but by the way, there's no specimens, which is 24 inches at chest height or
33 larger or three-quarters the size of the state or the county champion; no specimens, and
34 to be used for agricultural purposes. Well that gives preferential treatment under the
35 law. The next was this phony affidavit saying it would be used solely for agricultural
36 purposes -- a separate affidavit. Of course there is no evidence of that; has been
37 known. Next they submit still another plan. It dawned on somebody -- uh-oh; we've
38 already said we've cleared 10,000 feet; that's a violation. They just changed it; put in
39 another plan. Now the said they'd previously cleared 4800. So first you say it's to be
40 cleared -- 10,000, then they said previously cleared 10,000; then they said previously
41 cleared 4800. And then Park and Planning bought that, which it's all there. I could go
42 on. There's 14 of these. But there's a number of these where they've just -- whatever
43 they can do to make that application float through the system is what they did.



July 10, 2007

1 President Praisner,
2 Further questions, Marc?

3
4 Councilmember Elrich,
5 I was just wondering whether you wanted to walk the Council through the color pictures.

6
7 Mr. Kanstoroom,
8 I can show you briefly what the -- .

9
10 President Praisner,
11 Just very briefly. We have the pictures. They're part of the record and the Committee, I
12 know, will review them in September.

13
14 Mr. Kanstoroom,
15 I'll just do it very briefly. I'll watch my time.

16
17 President Praisner,
18 Extremely briefly.

19
20 Mr. Kanstoroom,
21 Extremely briefly. The first picture shows a forest -- previously existing forest. This was
22 in Park and Planning's file. They said it wasn't there. The next picture is from -- the next
23 is a picture that the USDA provided where you can see the big gaping hole in the forest.
24 And again Park and Planning wouldn't accept that. Next is the letter from the USDA
25 damage analyst saying that the clearing had occurred, as we knew. And then another
26 photograph taken by Park and Planning's vendor showing more than 22,000 square feet
27 of clearing and more than 30,000 square feet of disturbance. And then lastly is the
28 remediation, as Park and Planning is now contended they planted in the cleared area,
29 only there's nothing there. It's just not there. It doesn't exist. Sorry. I missed one. And a
30 sample of what Park and Planning first deemed a preexisting clearing where you can
31 see the large piles of logs, the disturbed earth, and yet they've stood there and said it
32 looks like it's preexisting. We don't see a violation.

33
34 President Praisner,
35 Okay, thank you.

36
37 Mr. Kanstoroom,
38 You're welcome.

39
40 President Praisner,
41 Councilmember Leventhal.

42
43 Councilmember Leventhal,



July 10, 2007

1 I apologize for prolonging this, I just -- and I understand we'll have time to deal with this
2 in Committee. We clearly need Park and Planning present when we deal with this in
3 Committee because the issues that are being raised here and assertions are being
4 made here but they're actually not necessarily relevant to the bill that's before us. And
5 even if we pass the bill that was before us, that would not address of the things that
6 we've heard, and Park and Planning is not here to explain what happened. So when we
7 get to this in committee, we can't just narrowly focus on the remedy proposed by the bill;
8 which I have to say, I mean, if -- if the agents -- I'm not debating it or questioning it or
9 denying it. I'm just saying if what is being alleged is true, that information was brought to
10 Park and Planning and Park and Planning denied what was brought to it; it may be that
11 there are other -- number one, that raises a lot of questions about what's going on in
12 Park and Planning that this bill doesn't deal with. But secondly, deputizing, to quote my
13 friend Wayne, a lot of neighbors to start suing each other may not necessarily be the
14 best remedy for that problem. It may be. It may not be. So we might want to look at a
15 wide range of issues here. And I guess that -- I guess I'm a little surprised to learn that
16 those issues would be before the T&E Committee. If they are, they are. But there's --
17 there's a whole lot of other issues being raised here. And I guess my last question is
18 what if you had notice? Would have you have filed an injunction to stop it? I mean,
19 absent is right to sue being notified that trees are being cut down. What comfort would
20 that have provided any of you -- all -- two of my friends from Bethesda here have
21 testified that trees were cut down without notice. What if you had had notice? That
22 would not have stopped the trees from being cut down; would it? Maybe you have felt
23 better because you knew about it ahead of time; or you could have court; or what?

24
25 Mr. Kanstoroom,

26 No, if I would have known about it ahead of time I believe that I -- with the help of either
27 administrators at Park and Planning or DPS, before the event they would have said, ah,
28 we see a problem and we'll stop it. What happened was there's a dynamic set up where
29 it's sort of a circle the wagons and everybody wants to say they didn't make a problem,
30 or they didn't cause a problem. To be notified in advance just -- I earnestly believe that
31 those officials would have said okay we see -- we see that this is a forest rather than
32 after the fact.

33
34 Councilmember Leventhal,

35 Okay there's two issues though. Because presumably, if I'm understanding correctly,
36 you need a permit -- you're supposed to have a permit before the tree clearing takes
37 place anyway. I heard everything you said. I understand that things did not happen --
38 you allege that things did not happen as they should have occurred. But there's two
39 issues of notice. There's notifying the agency, which occurs when a permit is applied
40 for; and then there's notifying the adjacent neighbors, which this bill would provide for. It
41 would require notification of the adjacent neighbors. And I understand this bill also gives
42 the adjacent neighbors to right to sue. So I do understand those things. But what was
43 said here is we got no notice. Now there is no private right of action today. This law



July 10, 2007

1 hasn't -- it's not law yet. So if you had had notice -- I guess I'll ask my friends from
2 Bethesda now -- what then? What would notice have given you other than information?

3
4 Ms. Petrides,
5 Well it did give -- it would have given us information.

6
7 President Praisner,
8 Betty, your mike.

9
10 Councilmember Leventhal,
11 You have to press the button in front of your microphone.

12
13 Ms. Petrides,
14 I'm not loud enough as it is. Sorry about that. Going back to Maiden Lane, which of
15 course does not apply, you know, it's not under the Forest Conservation Law, but it was
16 a treed lot that was sold without following the proper procedures and nobody was
17 notified. We found out because the land owner showed up and ribboned all the trees to
18 come down. And we said to him, what are you doing? And he said well I'm having the
19 people come in and remove all the trees on the lot. And we said why? And he said well
20 I've just bought the lot and was going to build here. If we would have known in advance
21 I think we would have done the same thing Steve is saying; we would have gone to
22 whatever -- whoever and said look, this is a problem because there's certain procedures
23 to be followed. A right-of-way has to be abandoned. It belongs in the County Council. It
24 doesn't belong in the Executive. We would like to see something remedied here. And
25 we could have stopped it then. We spent six years -- two years in court and four years
26 talking to Park and Planning about turning it back into a park, which we thought it was
27 originally. So it's -- notification is important. It does mean that you can say something to
28 somebody. It may not be a satisfactory solution that comes out of it.

29
30 Councilmember Leventhal,
31 Throws some sand in the works.

32
33 Ms. Petrides,
34 Exactly. Exactly.

35
36 Mr. Kanstoroom,
37 And if my neighbor was to be believed, when I learned about it he said I didn't know. I
38 didn't know that there was any prohibitions. I intended to clear the entire lot. And there
39 were red dots painted on all the trees. Well had I received notice, I certainly would have
40 called them right away and said, George, you can't do this. It's against the law. You
41 need permission. I didn't know.

42
43 President Praisner,
44 Okay, Councilmember Berliner.



July 10, 2007

Councilmember Berliner,

I just wanted to observe as Ms. Petrides did at the end there that her concern and I don't know if that was the concern of you with respect to Bethesda as well, did not relate to a "forest." It related to the phenomena of infill development that is taking place in our community and the destruction of trees that arise in that context. And that issue, which is separate and apart from the Forest Conservation Law because the Forest Conservation Law it does deal with forests as opposed to trees, is being addressed simultaneously in a task force that Councilmember Elrich and I have convened to look at that issue. Which does, at this point in time under discussion, would provide notice with respect to a proposal to take down a tree insofar as the tree is deemed to be -- have a larger, if you will, community asset that is something to be assessed. So the issue that you've raised and that is certainly a more common phenomena as it relates to the down county and the Bethesda area is something that we are addressing and look to forward to addressing, but it is separate and apart from the Forest Conservation Law by virtue of the magnitude of what is being discussed.

Ms. Petrides,

Yes I -- may I add one thing. That's acknowledged, but I do think that we wanted to support this issue because we felt that that the same thing had happened in other circumstances and had not been rectified, and it seems to be fairly common.

Councilmember Elrich,

If I can just close, George, by saying that one of those red flags for me was when it was in a newspaper interview regarding the story where one of the writers interviewed an employee, I believe, of Park and Planning. And they were asked about getting false or misleading information. And the response from the planning staffer was we get this all the time. And it set a huge red flag up. I mean if people are getting information that's not false, citizens have to have some remedy for being able to say look at this.

Councilmember Leventhal,

I agree that the allegations of Mr. Kanstoroom here send up a whole lot of red flags. It remains to be seen whether this narrowly tailored fix, which gives a private right of action to neighbors to sue each other if trees are cleared, is necessarily the spot on answer to the questions in my mind that I want to ask Park and Planning about and they're not here in response to everything Mr. Kanstoroom has said here on the public record. So I feel there's sort of a disconnect. And again I'm not sure the T&E Committee is ordinarily the forum where we would take up those questions about the administration of Park and Planning, not about the Forest Conservation Law.

President Praisner,

Well, again, the issue of who administers the -- and where the Committee consideration should go relates to forest conservation as the overall topic and the broader Forest Conservation Law modifications, which are coming from Park and Planning but given



July 10, 2007

1 the environmental responsibilities, it's the tree protection and the environment
2 perspective.

3
4 Councilmember Leventhal,
5 I get that.

6
7 President Praisner,
8 I understand your point. And in the context of folding this in into the other issues, I will
9 have a separate conversation with the Committee Chair so that we can talk this through.
10 But we'll remind folks that last week we spent a lot of time on the road code where the
11 issue was a debate between Park and Planning and the Department of Public Works
12 and Transportation on a piece of it. And that was before the T&E Committee, even
13 though a relationship of that issue was Park and Planning's authority. So there are not
14 things that are exclusively clear cut from a stand point of role, perhaps what we will do
15 on this issue is as we look at what comes over from Park and Planning may have a joint
16 committee conversation on a piece of this.

17
18 Councilmember Leventhal,
19 I just want to be clear, Madam President and Madam Chair, that if we -- we have this on
20 the record here this list of allegations for Mr. Kanstoroom. And I'm sure other
21 Councilmembers are sitting here saying gee I wish Park and Planning could tell me
22 what's their side of the story. And yet they're not here. And if I ask Park and Planning for
23 its side of the story in Committee -- I happen to be a member of the T&E Committee, I
24 hope I don't get told well that's not germane to the bill, we're only talking about the
25 Forest Conservation Law here today.

26
27 President Praisner,
28 No. Well again we'll work through that piece. Wait until you see the other pieces of the
29 Forest Conservation Law that I think are coming out of the Committee.

30
31 Councilmember Leventhal,
32 Can't wait. Just wait.

33
34 President Praisner,
35 That's for the fall.

36
37 Councilmember Leventhal,
38 Property owners are on the edge of their seat waiting, I'm sure.

39
40 President Praisner,
41 Well, let's move to the second group, please. Thank you all very much. Ann Ambler for
42 the Sierra Club. Cynthia Fain is speaking on her own behalf. Ginny Barnes, Audubon
43 Naturalist Society. And Steve Orens for Mr. Palmeiro. And Ann is first.



July 10, 2007

1 Ms. Ambler,

2 Good afternoon. My name is Ann Ambler. I'm speaking on behalf of the Sierra Club in
3 support of Bill 14-07. The opening section of our Forest Conservation Law lists the
4 many environmental and economic benefits of trees and forests, and recognizes that
5 forest loss is a serious problem in our county. We must now add to this list the
6 importance of trees in slowing runaway global warming. Fifteen years experience with
7 our exemption riddled and convoluted law has demonstrated its problems. But trees all
8 over the county also suffer from simple lack of ensured enforcement. Some words of
9 advice from certified arborists at Millhouse of Trees Please. First, failure to enforce
10 creates a false sense of comfort among home buyers who are lead to believe they are
11 being protected; when they find out that the protection was not real, they get very
12 cynical. Failure to enforce breeds contempt in those who try to follow the rules but see
13 others getting away with violations. Failure to enforce emboldens those who will try to
14 violate and try other scams. Unfortunately we're seeing all of this in the county. We have
15 the greatest respect for Chairman Hanson and the work of the county's planners.
16 However as Rose Krasnow said in connection with the Clarksburg difficulties, this is a
17 complaint's driven agency. The public cannot expect Park and Planning staff to be
18 omnipresent and omniscient. They need help. Adjacent and confronting property
19 owners are in the best position to know what's going on. They must have a privet right
20 of action while the (inaudible) benefit for violators must be consistently eliminated.
21 Knowledge that they may be sued for violating Forest Conservation Law, that they must
22 alert neighbors in advance, and that they cannot build on illegally cleared land will make
23 potential violators think twice before they chop, thereby enhancing compliance, and
24 lightening the enforcement burden on Park and Planning. Will this amendment unleash
25 a torrent of lawsuits? Highly unlikely. Although aggrieved person is not by the language
26 of this bill limited to owners of adjoining and confronting property, courts have usually
27 refused standing to those economically damaged by the action. Line 62 appears to limit
28 legal grounds to false or inaccurate information provided to the Board and lack of proper
29 notice to neighbors, which is highly limiting. The amount of clearing that is actionable,
30 more than 5,000 square feet is a lot of clearing. For illustration it's more than four times
31 the footprint of my four-bedroom house. The Sierra Club therefore urges passage of Bill
32 14-07 and broad dissemination to the public of the new rights and requirements. I think
33 this will be a great benefit. I'm perfectly happy to have this worked into the other things -
34 - the other Forest Conservation Amendments that are being planned.

35
36 President Praisner,

37 Thank you. Ms. Fain.

38
39 Ms. Fain,

40 My name is Cynthia Fain. I'm a resident of Rockville, Maryland, and a lifelong
41 Montgomery County resident. I'm a trained conservation easement monitor with the
42 Maryland Environmental Trust but the views expressed in this testimony today reflect
43 my personal feelings. I support Expedited Bill 14-07. Residents of Montgomery County
44 are long overdue for having more legal rights to enforce the Forest Conservation Law



July 10, 2007

1 and protect their property rights. Many County residents have witnessed violations of
2 the Forest Conservation Law often on neighboring properties. Our current Forest
3 Conservation Law is not effective, and violators of the Forest Conservation Law often go
4 un-penalized. The new measures outlined in Bill 14-07 are a good step towards
5 ensuring that violators of the Forest Conservation Law will be penalized. No one should
6 be allowed to build on a site where they have committed a violation of the Forest
7 Conservation Law. The proposed penalty will mean that all Forest Conservation Law
8 violators will be uniformly treated. I recently lived on a property in Rockville, Maryland,
9 that held a Category I Conservation Easement through Maryland National Capital Park
10 and Planning. My neighbors illegally mowed the Category I Conservation Easement for
11 several years. I tried to get Park and Planning to enforce the no-mowing standard of the
12 conservation easement and all I've received were a lot of excuses. The easement that
13 was illegally mowed should now be a large reforested area. Due to the lack of
14 enforcement from Park and Planning, the easement is just mowed grass. This example
15 shows why we need legislations that allows private citizens to bring civil suits against
16 those who commit violations of the Forest Conservation Law. Had I owned the house
17 with the Category I Conservation Easement, I may have been able to file suit to get this
18 illegal mowing stopped. Bill 14-07 gives citizens the right to know in advance if their
19 neighbor is planning on clearing forest. This provision will reduce illegal tree clearing
20 and will help to protect Champion trees. The County already requires neighbors to give
21 advance warning plans about plans to demolish a house; now residents will have ample
22 time to review plans of forest clearing on neighboring lots. I urge the County Council to
23 vote in favor of Bill 14-07. Our once heavily forested County is now being paved over at
24 an alarming rate. We cannot wait any longer to bring stronger protections to our forest.
25 Thank you.

26
27 President Praisner,
28 Thank you. Ginny Barnes.

29
30 Ms. Barnes,
31 Thank you. For the record, I'm Ginny Barnes and I've been asked to make some
32 comments on behalf -- .

33
34 President Praisner,
35 Ginny, I know you have a soft voice. You need to speak up so everybody can hear you.

36
37 Ms. Barnes,
38 I've been asked to make comments on behalf of the Audubon Naturalist Society. And I
39 have actually some rather informal both comments and questions that this bill raises.
40 Like Ann, think the increased attention to global warming has made trees urgent -- trees
41 and forests urgent to many more citizens of the County. Like the County Executive's
42 Office, I think this bill may have some unintended consequences that we need to
43 explore before going forward with it. I also think it presents some very useful ideas that I
44 had not thought of previously. And I have worked on the Forest Conservation Law



July 10, 2007

1 Amendments for the Canal Task Force. One of them is the idea of treating the
2 destruction of trees as a demolition project and giving -- requiring notice just as you
3 would if you were tearing down a building. I think the neighbors have a right to that
4 notice. I'm a little concerned about why pick 10 days; 10 days doesn't seem like a very
5 long time to act if you know that trees are being -- are coming down. You don't have
6 time to do enough investigation if you're a neighbor; especially since most people don't
7 know how to do that kind of investigation they need, you know, help. The idea of giving
8 citizens recourse to enforcement decisions or the lack thereof by the lead agency and
9 the ability to take civil action as a remedy in the interim, in other words, stopping what's
10 happening while you do the necessary groundwork. I think those are very intriguing
11 ideas and should be looked at carefully. I do have some question about the portion that
12 says if the director -- that says the director cannot issue a permit for any structure on
13 land where a violation has occurred. Does this mean never, ever? What does this
14 mean? How long? And will there be requirements to reforest or to replant that area that
15 has been cut. And for Mr. Faden, I understand that if easements fall under the Forest
16 Conservation Law, they would be covered by this new amendment. But if not, would
17 those be covered? There are other easements on property that protect forests that are
18 not covered -- that are not imposed by the Forest Conservation Law is what I'm trying to
19 say. And since this bill involves making the Park and Planning Commission answerable,
20 I think they should be here to be that -- answerable. And we should have some legal
21 knowledge from them of how this would affect them. And I'd like to see us take the
22 ideas here, fold them into a larger prioritized overhaul of the Forest Conservation Law.
23 Thank you.

24
25 President Praisner,
26 Thank you. Mr. Orens.

27
28 Mr. Orens,
29 Thank you, Madam President. For the record I'm Steve Orens with Miles and
30 Stockbridge. Because I am George Palmeiro's attorney, I cannot and I will not respond
31 to the allegations that were presented to the County Council today on a matter
32 impending litigation before the Circuit Court. I would only ask that this Council not rush
33 to judgment on the basis of one side to a story; and that this Council not consider in the
34 context of a proposal that affects every property owner in Montgomery County, what
35 may or may not have happened on one site in Ashton. This bill proposes to confiscate
36 property rights. To confiscate the right to construct a building -- any building on land
37 where there was any -- any violation of Chapter 22A, no matter how minor that violation
38 may have been. And as written, this bill proposes to confiscate property rights to build if
39 a property owner failed to give 10-day notice to an adjacent property owner that they
40 planned to cut, clear or grade; I'll get to that in a moment. This bill also gives the
41 imprimatur of Montgomery County to what I see as vigilante enforcement of county
42 laws; any county law. That's what the bill says. Not limited to forest conservation; it says
43 any county law by any next door neighbor or adjacent property owner of any property
44 owner in Montgomery County. I submit, ladies and gentlemen, that this is an illegal



July 10, 2007

1 delegation of the police power of the County delegated to it by the constitution and the
2 statutes of the State of Maryland, and it will not withstand judicial scrutiny. Nor will the
3 proposal to confiscate property rights to develop on the basis of a prior or even a future
4 violation of the law. You cannot under the guides of regulation take all reasonable rights
5 to used property from a property owner without having to pay for it under the Fifth
6 Amendment to the Constitution, and under the Declaration of Rights of the Maryland
7 Constitution. And you cannot do that. You cannot do that without having a process that
8 guarantees due process both substantive and procedural. This bill will create a situation
9 -- may I have at least half the time that Mr. Kanstoroom had?

10
11 President Praisner,
12 If people have questions for you; you may. You get the same three minutes Mr.
13 Kanstoroom did. I asked him to conclude his testimony. We have it in writing. That's the
14 same rules for you, Mr. Orens. So you may complete your sentence.

15
16 Mr. Orens,
17 Every property owner, every buyer of property in Montgomery County from henceforth
18 under this bill will be at risk of buying un-build-able property by virtue of actions that are
19 not recorded and cannot ever be disclosed by a title search.

20
21 President Praisner,
22 Thank you. Mr. Leventhal.

23
24 Councilmember Leventhal,
25 It seems, Mr. Orens, that you got through most of your testimony. I did ask a number of
26 questions of Mr. Kanstoroom and he did respond at length, and it does seem fair to me
27 that in response to my question now that if you have some additional points you wish to
28 make, I think the constitutional arguments you are making were on my mind as well. But
29 if you're done, you're done. I mean I'll offer you the opportunity to -- .

30
31 Mr. Orens,
32 Very briefly.

33
34 Councilmember Leventhal,
35 Conclude your constitutional analysis of this legislation.

36
37 Mr. Orens,
38 Well, very briefly, Mr. Leventhal. And it's more a statutory than a constitutional point.
39 And I will not repeat what is in my written testimony. But I will ask this question. And I
40 understand the President's comments about the difference between expedited
41 legislation as due process and as to effective date. And I direct this question in terms of
42 the effect -- of the immediate effective date of this legislation. Why is this legislation so
43 necessary for its immediate effectiveness, yet whatever that emergency is, it will



July 10, 2007

1 miraculously disappear in 18 months when the bill sunsets? Why is it so important now
2 that that importance will not be there in 18 months? I know the answer to that question.

3
4 President Praisner,
5 Excuse me, Mr. Orens, but there is no sunset on this legislation. I'm not sure what
6 you're reading.

7
8 Mr. Faden,
9 I think what Mr. Orens is confusing is the expiration date of the bill's pendency (sic)
10 before the Council, which is in the upper right hand corner of the title page. There is -- .

11
12 Mr. Orens,
13 I believe I saw a sunset provision of 2008.

14
15 President Praisner,
16 There is no sunset provision in the legislation.

17
18 Mr. Orens,
19 Then I stand corrected.

20
21 President Praisner,
22 There is a sunset provision as every bill introduced has. If it is -- I find myself as a
23 Council President doing a tutorial on legislation. For the benefit of folks who also don't
24 understand more than just the term expedited bill; in the corner of the -- any -- every
25 legislation there is an expiration date that is related to if the Council has not acted on
26 the legislation by that date, it no longer is a live piece of legislation before the Council.

27
28 Mr. Orens,
29 I stand corrected, Madam President.

30
31 President Praisner,
32 It does not deal with the law. If you want to look for where the law may be a short-term
33 law that expires, you must look to the language of the legislation not to the chart in the
34 corner. I believe I'm correct. But not being a lawyer, I'm only dealing with simple kinds of
35 basic structure that I would hope lawyers and everyone else would be familiar with. Mr.
36 Leventhal, further questions?

37
38 Councilmember Leventhal,
39 Well I do -- I do hope that when the T&E Committee takes this up not only that, as I said
40 earlier that Park and Planning will be present there; their absence here is striking. I
41 understand you sign up to testify and they haven't taken a position yet. And this matter
42 does -- in general, when we have legislation before us in public hearing, we do have the
43 views of the Planning Board staff and the Planning Board.



July 10, 2007

1 President Praisner,
2 For the record, I did receive communication from Mr. Hansen asking that it be
3 incorporated in the conversation of the Forest Conservation Law, which is consistent
4 with what Mr. -- Councilmember Elrich and I had already communicated to the Planning
5 Board.

6
7 Councilmember Leventhal,
8 So we'll hear from the Planning Board later.

9
10 President Praisner,
11 So that's why they are not here to comment.

12
13 Councilmember Leventhal,
14 But again -- but again, we had, I mean, Mr. Orens has said that he will not speak to the
15 specifics of his client's case, which is now being litigated. So we may never know the
16 other side or multiple other sides with respect to allegations that were made here on the
17 record about this particular piece of property in Ashton. Maybe we will and maybe we
18 won't. We would like to know -- I would like to know what actually went on within Park
19 and Planning and what is, you know, is there another side to that. But in addition, I hope
20 that, as the Chair has already indicated -- the Chair of the T&E Committee, that the
21 County Attorney can give us some advice. Because if -- if we're moving in the direction
22 that ultimately we're going to say that you may never cut down another tree in
23 Montgomery County, which some might say would be a good direction to go; I do think
24 there are some issues about taking and about compensation to property owners. So I'm
25 not -- I'm not taking a view one way or the other on this bill. We'll listen in T&E and we'll
26 go through it. But we're providing safeguards. We're creating new ability for neighbors
27 to sue each other. And I guess -- and we'll wait and see what -- where we're ultimately
28 headed. But is it -- what ultimately is the large goal here? Is it to say ultimately that we
29 won't cut any more trees on any property? I'm trying to understand that.

30
31 President Praisner,
32 I don't think the legislation does that. But we'll see what the Forest Conservation
33 changes are, which come over in the comprehensiveness, but I don't think this
34 legislation does that.

35
36 Councilmember Elrich,
37 I swear they're not that extreme.

38
39 President Praisner,
40 Councilmember Ervin.

41
42 Councilmember Ervin,
43 Mr. Orens, I had a question on page one of your testimony; it's the second to the last
44 paragraph where you say why are you proposing to give a private person the right to



July 10, 2007

1 enforce the law, to challenge administrative decisions in which that person has no
2 special interests. And I am looking the bill and I'm trying to find in the bill -- .

3
4 President Praisner,
5 Line 52.

6
7 Councilmember Ervin,
8 Is that 52? Can you speak to that; private civil action?

9
10 Mr. Orens,

11 Yes. From a standpoint of legality, the power to enforce laws is delegated to the County
12 government, not reserved to the people. Some jurisdictions have what is called the
13 Private Attorney General. And in some jurisdictions there are specific laws that can be
14 enforced. The laws under which Montgomery County legislates do not, in my opinion,
15 permit the County Council to delegate enforcement to private persons. The presumption
16 created by this bill that one is entitled to enforce a law because of activities on an
17 adjacent property that do not trespass on or affect the adjoining property is the creation
18 of a right of enforcement that is unheard of in county law at this time; and gives the
19 private citizen the opportunity to re-litigate and re-determine in court that which has
20 been already determined by the proper governmental authorities. For example, if the
21 Department of Permitting Services were to issue a notice of violation, investigate that
22 notice, and conclude that no violation occurred, under this proposal there would be no
23 finality to that. And the next-door neighbor, who is defined as aggrieved person would
24 then have the right independently to go to court and put the property owner through a
25 second judicial or administrative-type proceeding to once again determine whether or
26 not a violation occurred. And if the government, in my example, found no violation to
27 exist and a circuit court judge did, then the confiscation provision of this bill prohibiting
28 any further permit for the construction of any structure on, in or under the property
29 would take effect and the property owner would lose future development rights. I believe
30 that that is a draconian approach to the enforcement of the Forest Conservation Law,
31 which I will say as one who has been involved with Park and Planning in that
32 enforcement process, is not as one-sided in favor of the destruction of trees as you
33 might believe from some of the testimony you have heard.

34
35 President Praisner,
36 Councilmember Floreen.

37
38 Councilmember Floreen,

39 Thank you. I guess I have a question for staff and for the folks who've testified to think
40 about. When we change some of the rules as a result of Clarksburg, we talked a lot
41 about enforcement authority. And I guess as I sit here listening to all the parties
42 unhappy with the enforcement actions that have occurred so far, the question that I
43 have in mind, and I would be interested in your comments before whenever we get to
44 this, is whether we should exam who is exercising the enforcement authority now. Is



July 10, 2007

1 Park and Planning; is that the right place? Should it be DPS? Should we have a
2 consistent enforcement mechanism here? We did adjust that to a certain degree a
3 couple of years ago. And I guess the question I have, Mr. Faden, if you'd take a peek at
4 that issue when we get to it, and I'd be interested in the views of the -- all the parties on
5 the subject. Is that something worth looking at or not? I know Park and Planning will
6 have a point of view. Thanks.

7
8 President Praisner,
9 Okay, thank you. I have a question for Mr. Faden. Mr. Orens' testimony speaks to
10 enforcement of any county law. Is this language written so that it allows someone to
11 enforce "any county law"?

12
13 Mr. Faden,
14 No I believe it's limited to the Forest Conservation Law.

15
16 President Praisner,
17 Mr. Orens, where in the bill do you suggest that -- .

18
19 Unidentified,
20 (Inaudible).

21
22 President Praisner,
23 Your testimony says that it gives the imprint of the County Government on the vigilante
24 enforcement of "any county law" by "aggrieved persons." I understand aggrieved
25 persons; that's obviously within the legislation, but where in the legislation is every
26 county law or any county law being granted that authority?

27
28 Mr. Orens,
29 Madam President, if you would look on page 4 of the bill beginning on line 56, and I
30 read it to you and I quote, "In any action filed under this subsection the court may
31 temporarily or permanently (inaudible) any violation or imminent violation of county law
32 period" county law.

33
34 President Praisner,
35 Thank you. Mr. Faden.

36
37 Mr. Faden,
38 Well it's in the context, if you read the beginning of that subsection.

39
40 President Praisner,
41 It says enforce this chapter or any forest conservation plan. It doesn't say any law
42 period. It's under the enforcement of the chapter or any forest conservation plan. It
43 doesn't deal with every law. Mr. Orens, I would suggest that you go back and read the
44 whole piece that is suggested here, because as drafted by Mr. Faden, I think it only



July 10, 2007

1 relates to the Forest Conservation Law. That concludes the public hearing. Thank you
2 all very much. We have one more public hearing, folks, if I can find the piece of
3 legislation. Good afternoon, ladies and gentlemen. This is the public hearing on
4 Expedited Bill 16-07, Admissions and Amusement Tax Exemption Golf Courses, which
5 would exempt certain private golf courses from the admission and amusement tax and
6 generally amend the law authorizing the admissions amusement tax. A Management of
7 Fiscal Policy Committee -- excuse me folks we are still having a public hearing. A
8 Management and Fiscal Policy Committee work session is tentatively scheduled for July
9 23, at 9:30 a.m. Persons wishing to submit additional material for the Council's
10 consideration should do so by the close of business, Friday, July 13. Before beginning
11 your presentation, please state your name clearly for the record. And before I call
12 anyone up, I want to make sure we are clear, because as I just consulted with the
13 Council Vice President, and I want to make sure in the introduction of this legislation,
14 Vice President Knapp as the sponsor of it made very clear that it does not only relate to
15 golf courses; it also relates to agricultural tax collected for agricultural purposes; right?
16 And I want to make sure it was advertised appropriately. Unfortunately the packet and
17 the hearing comments makes no reference to the second piece, and I know people are
18 coming to testify are going to testify on both pieces of the issue, and it isn't exclusively
19 golf courses. So with that in mind, George Lechliden, Montgomery County Farm Bureau;
20 Wade Butler, Montgomery County Agricultural Advisory Committee; Susan Butler,
21 Butler's Orchard; and Joseph Hills, Blue Mash Golf Course.

22
23 Mr. Faden,

24 Mrs. Praisner, while they're coming up, just to make the record clear, the advertisement
25 did mention agricultural tourism; staff neglected to put the ad in this packet.

26
27 President Praisner,

28 Okay, it would be helpful though if the packet for the Council hearing, as well as the
29 packet -- the notice on our agenda made reference to both pieces since that's how it
30 was introduced.

31
32 Mr. Faden,

33 Right, it should have been in the packet.

34
35 President Praisner,

36 Okay, George, you're first.

37
38 Mr. Lechliden,

39 My name is George Lechliden, and I'm here to speak on behalf of the Montgomery
40 County Farm Bureau for the Expedited Bill 16-07 to exempt agriculture tourism activities
41 from the admissions and amusement tax. The Farm Bureau is represented by over
42 3,000 family members and we thank the County Council for the opportunity to present
43 our views on this important bill that will provide assistance to farm operations all for an
44 agricultural tourism activities in the county. When I started farming almost every family



July 10, 2007

1 in the county had someone that was involved in agriculture. Over the years we have
2 seen how most families no longer have any connection to farming. And this environment
3 requires us to reach out and educate the general public to make sure they know where
4 their food comes from. Operations like Butler's Orchard, Homestead Farms, Phillips
5 Farm, and Louis Orchard, all serve an important role for agricultural education. And we
6 need to provide more incentives for these operations to exist in Montgomery County.
7 The 18th Annual Farm Tour and Harvest sale is coming up on Saturday and Sunday,
8 July 28 and 29, and this event will provide an excellent opportunity for everyone to
9 come see these farms as well as many others to learn about farming and the
10 agricultural reserves. And if anyone one of you would like to have a personal tour, I'll
11 make sure that someone in the Farm Bureau or someone will give you a personal tour
12 of all these farms and some of the others. The Montgomery Farm Bureau respectfully
13 requests the County Council to include agricultural tourism as part of the Expedited Bill
14 16-07 to provide incentives for farming and exempt agricultural tourism activities from
15 the admissions and amusement tax in Montgomery County. Some of the other counties
16 already have it and I think we have to do everything we can to keep agricultural viable in
17 Montgomery County. And I thank you for giving me your time. I won't take anymore.

18
19 President Praisner,
20 Thank you. Mr. Butler -- Wade.

21
22 Mr. Butler,
23 Thank you, Council President Praisner and other members of the committee. My name
24 is Wade Butler and I'm speaking today on behalf of the Ag Advisory Committee. On
25 behalf of the Montgomery County Agricultural Advisory Committee, we thank you for the
26 opportunity to present this testimony for the public hearing in support of Ag tourism
27 activities being exempt from the admissions and amusement tax. We want to express
28 our special thanks to the sponsor, Mike Knapp, for understanding the importance of how
29 this admissions and amusement tax negatively impacts farm markets in Montgomery
30 County that provide opportunities for expanding the awareness of agriculture to the
31 general public. It may be helpful to know that there are several counties in the state that
32 have adopted similar legislation to exempt their Ag tourism activities from the
33 admissions and amusement tax, and Expedited Bill 16--07 will help level the playing
34 field for Montgomery County. These counties include Baltimore, Calvert, Hartford and
35 our neighbor, Howard. Thank you for your continued support for farming in Montgomery
36 County, and we encourage the County Council to include Ag tourism as exempt from
37 this tax that we are currently paying. The relief from the tax will help us greatly, and the
38 fiscal impact in the County Government will be minimal. Thank you very much.

39
40 President Praisner,
41 Thank you. Susan Butler.

42
43 Ms. Butler,



July 10, 2007

1 Good afternoon, my name is Susan Butler. I'm here to speak on behalf of my family at
2 Butler's Orchard.

3
4 President Praisner,
5 He's more experienced at this.

6
7 Ms. Butler,

8 Yes, that's why we send him down -- in support of Expedited Bill 16-07 to Exempt
9 Agricultural Tourism Activities from the Admissions and Amusement Tax. My parents
10 established the Butler's Orchard in 1950. Today our families operate our farm market
11 and includes several festival activities throughout the growing season. We do want to
12 thank you for the -- Council for this legislation. And I do agree with my brother that the
13 sponsor, Mike Knapp, understands the importance of how the admissions and
14 amusement tax negatively impacts the farm markets of Montgomery County. Butler's
15 Orchard is very proud of our Annual Pumpkin Festival; 28 years this year, where
16 families return year after year to celebrate the harvest in a family tradition. Butler's
17 Orchard represents an important part of Montgomery County's agricultural industry and
18 quality of life for people as they visit the farm each year and enjoy the outdoors and the
19 agricultural ways of life. For Butler's Orchard, the admissions and amusement tax
20 represents an additional cost of production and it requires record keeping that is very
21 time consuming. The business of agricultural is difficult enough in times with increasing
22 production costs, such as seed, fertilizer and fuel for all of us. When farmers include the
23 risks associated with weather, crop damage from deer, insects and disease, these
24 factors make it increasingly difficult for us to make a profit. Agricultural tourism is
25 certainly a wave of the future; it's a way to keep our consumers educated about farms,
26 where the fruits and vegetables come from and other agricultural products. Thank you
27 for your support of Expedited Bill 16-07 to provide incentives for farming and agricultural
28 tourism activities in Montgomery County. Thank you.

29
30 President Praisner,
31 Thank you. Mr. Hills.

32
33 Mr. Hills,

34 Thank you. My name is Joseph Hills and I'm the owner of Blue Mash Golf Course.
35 Currently, Blue Mash Golf Course and Trotter's Glen Golf Course are the only two
36 public golf courses in Montgomery County that are required to pay the admissions and
37 amusement tax. There are 11 other public golf courses in Montgomery County that
38 directly compete with these two courses and which do not pay the admissions and
39 amusement tax. Where remarkably country clubs, which restrict their play in
40 membership to a few hundred people, are also not subject to the amusement tax on the
41 bulk of their golfing revenue, namely monthly dues. Therefore of the 28 golf courses in
42 Montgomery County, the County is levying an additional tax on only two of those golf
43 courses. Not because they are privately owned, but because they are privately owned
44 and open to the public. We submit for the Council's consideration that this is a



July 10, 2007

1 counterintuitive and unfair application of a tax on two service businesses in this county.
2 We further submit for the Council's consideration that this narrow application of a tax on
3 two specific businesses in this County is not due to a conscious choice by any previous
4 County Council or state legislature, but exists more by default or accident than anything
5 else. Until Trotter's Glen opened in the mid 1990's and Blue Mash 2001, there were no
6 privately owned public-access golf courses in Montgomery County. And so there has
7 never been the need to correct the legislation nor an advocate for doing so. Past
8 Montgomery County Planning Boards and County Councils have considered public golf
9 course so essential to economic development and public good that the County has
10 issued tens of millions of dollars in revenue bonds and devoted considerable internal
11 resources to developing and operating ten public golf courses of its own. Blue Mash and
12 Trotter's Glen provide the same recreational amenity, open space, economic
13 development, and quality of life benefits, and furthermore generate property tax revenue
14 that the County loses out on with its other public golf courses. Yet Blue Mash and
15 Trotter's Glen are taxed still additionally and unfairly. Councilmember Knapp, sharing
16 our position on this issue, has kindly agreed to offer this legislation that would correct
17 the situation; we respectfully request that it be approved, and hope that the Council will
18 do so. Thank you.

19
20 President Praisner,
21 Thank you. Councilmember Elrich.

22
23 Councilmember Elrich,
24 Do the taxes -- the entertainment taxes affect your competitiveness with the county
25 courses? Because there's no competitiveness issue with the country clubs?

26
27 Mr. Hills,
28 Correct. Yes, they directly affect our competitiveness with the county courses. In
29 particular -- all of the golf courses, but in particularly the County has developed upscale
30 daily fees, which Blue Mash is -- Hampshire Greens and Little Bennett being the two
31 examples. And we compete directly with Hampshire Greens. In fact we lost corporate
32 outings because Hampshire Greens has been able to undercut our prices so much. In
33 fact the Silver Spring Chamber of Commerce of all things an organization that is
34 supposed to promote business moved their outing from Blue Mash to the Hampshire
35 Greens. They had a new director and Hampshire Greens' price was \$20 lower or
36 something and so they moved their outing because of that.

37
38 Councilmember Elrich,
39 And so you're saying that day in and day out your tee fees are greater -- or green fees
40 are greater than the County fees?

41
42 Mr. Hills,
43 They are. At one point our fees were the same as Hampshire Greens except for the
44 additional month that we had to charge in amusement tax. Since then our top fee has



July 10, 2007

1 gone higher, but we still offer fees that are the same as the County golf course. We
2 have a \$25 junior rate, which is the same as what the County offers. We are paying
3 amusement tax on that; they aren't. We have other fees that are the same; twilight rates
4 and so forth. So we absolutely compete directly with all of the county golf courses --
5 Falls Road, Knead Wood, Little Bennett, Hampshire Greens; there's no question about
6 it.

7
8 Councilmember Elrich,
9 Okay.

10
11 President Praisner,
12 Perhaps it would be helpful -- I know we have gone through this before because we had
13 this discussion in consideration MFP Committee as I recall last session, if not before --
14 two years ago I guess it was, thank you -- on the issue of the difference, because the
15 question was then whether we should increase the -- the amusement tax on the Park
16 and Planning golf courses, as I recall. So it would helpful for us to review -- have that
17 information. Other point, Mike, I note that -- I see two different fiscal impact documents
18 in the packet. The fair taxation for Blue Mash, circle 5, talks about the effect of the
19 legislation, I believe, from the golf course perspective as 150 to 160,000, and the fiscal
20 impact statement from finance from Mr. Beach says 133.8. So if we can verify what is
21 the golf piece and then what is the agricultural piece for that. Because I'm not sure if -- .

22
23 Mr. Faden,
24 I think circle 5 came from Blue Mash.

25
26 President Praisner,
27 Yes, I know that.

28
29 Unidentified,
30 It was a total estimate we don't -- they were being conservative.

31
32 President Praisner,
33 Right. Okay. But the fiscal impact statement from the Office of Management and Budget
34 only deals with golf courses.

35
36 Mr. Faden,
37 Right. We'll ask them to -- .

38
39 President Praisner,
40 And we need to have it updated.

41
42 Mr. Faden,
43 Right.



July 10, 2007

President Praisner,
Okay. I don't see any other -- oh, I'm sorry, Marc.

Councilmember Elrich,
I'd actually be interested in information on eliminating the discrimination by going in the other direction -- what would we raise by taxing all of this, including the country clubs.

President Praisner,
We can't, as I recall, tax -- I think we had that conversation about the country clubs
(inaudible).

Mr. Faden,
Yeah, I think state law precludes the County from taxing the country clubs; and I will check to see whether it automatically exempts publicly-owned courses.

President Praisner,
No, we made a conscious decision about the Park and Planning Revenue Authority; I believe that was the conversation a while ago.

Mr. Faden,
I think so, yeah.

President Praisner,
But we -- we're precluded from dealing with the country clubs.

Councilmember Elrich,
There must be some special fee.

President Praisner,
No. Only if they hold tournaments with Tiger Woods in attendance, we'll craft them that way. I don't see anything else. We're adjourned. Thank you all. We'll be back at 7:30 in the third floor hearing room for our evening hearing.